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Linda Jacobson (3 Copies)  
RCRA Project Manager  
US EPA Region VIII  
8ENF-T  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

October 7, 2007

SENT BY CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

**CONSENT DECREE  
CIVIL ACTION NO. CV 98-3-H-CCL  
EAST HELENA SITE  
WORK PERFORMED IN SEPTEMBER 2007  
PROGRESS REPORT #105**

Dear Ms. Jacobson:

On May 5, 1998, Asarco and the United States Environmental Protection Agency (EPA) entered into a Consent Decree (Decree) to further the objectives of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). Section XI of the Decree (Reporting: Corrective Action) requires Asarco to submit certified monthly progress reports to EPA which discuss the actions taken by Asarco in achieving compliance with the Decree. The reports are to be submitted to EPA no later than the twentieth (20<sup>th</sup>) day of the following month. The following describes only those activities that have occurred or are related to projects performed during September 2007. The historical actions taken by Asarco in achieving compliance with the Decree are contained in previous monthly progress reports.

- a. **Describe the actions, progress, and status of projects which have been undertaken pursuant to Part VII of the Decree;**

The Idaho National Laboratory (INL) continues to work on creating the data interface and importing all collected data. The INL September 2007 progress report updated is attached to this monthly progress report.

**Interim Measures Work For 2007**

In a June 13, 2007 letter, EPA approved Asarco's bench-scale permeable reactive barrier (PRB) media testing work plan. The September 2007 CDM status update on the bench-scale PRB testing work plan (East Helena PRB Materials Testing - Jar Test Results) is attached to this monthly progress report.

On July 18, 2007, Asarco submitted the 2007 Addendum to Interim Measures Work Plan, East Helena Facility, Former Speiss-Dross Slurry Wall Monitoring, Operation, and Maintenance Work Plan. On August 24, 2007, EPA provided Asarco with approval of the Work Plan. As a condition of approval, Asarco has agreed to install a fifth groundwater monitoring well, which will be located north and west of the proposed slurry wall. Asarco's contractor completed three of the five proposed groundwater-monitoring wells in August 2007 and completed the remaining two wells in early September 2007.

The approved Design Plan for the Former Speiss-Dross Slurry Wall and its associated Monitoring, Operation, and Maintenance Work Plan have undergone a 30-day public comment period, which closed on September 23, 2007. Having received no comments, EPA approved construction of the slurry wall on September 27, 2007.

Asarco has selected Geo-Con Environmental Barrier Company, LLC as the prime contractor for the construction of the slurry wall and temporary cap in the former speiss-dross plant area. EPA was provided formal notification of Asarco's selection and Geo-Con's Statement of Qualifications in a September 17, 2007 letter. Geo-Con has been provided a copy of the Consent Decree. In a September 11, 2007 e-mail, Asarco provided EPA with the preliminary schedule for construction of the slurry wall and temporary cap. In a September 26, 2007 letter, EPA accepted Asarco's invitation to have our contractor videotape portions of the abandonment of underground utilities and structures, and installation of the slurry wall and interim cap.

On September 12, 2007, Asarco provided EPA with the 2007 Interim Measures Work Plan Addendum - Speiss-Dross and Thaw House Areas Cleaning, Demolition, and Soil Sampling Work Plan. On September 17, 2007, Asarco participated in a conference call with EPA and the Montana Department of Environmental Quality to discuss the preliminary comments on the Work Plan. Based on this discussion, Asarco submitted the 2007 Interim Measures Addendum Work Plan - Speiss-Dross and Thaw House Areas, Soil Sampling, Excavation, Confirmatory Sampling and Interim Capping Work Plan on September 25, 2007. This revised Work Plan 1) describes the structures where excess soils are present, the structures past usage, material release information, and substructure utilities, 2) removes the demolition provisions contained in the September 12, 2007 Work Plan, 3) provides all SOP's relevant to the sampling activities, including specifics on XRF testing methods, 4) updates the size of certain figures, and 5) addresses underground utilities that may be encountered during excavation.

In a September 26, 2007 e-mail, Asarco notified EPA that cleaning, demolition, and soil excavation of the main office had been completed. The notification advised EPA that the soil sampling plan outlined in the 2007 Interim Measures Addendum Work Plan - Speiss-Dross and Thaw House Areas, Soil Sampling,

Excavation, Confirmatory Sampling and Interim Capping Work Plan would be conducted prior to backfilling the excavation hole with fumed slag.

In an e-mail dated September 19, 2007, EPA approved Asarco's proposed excavation of excess soils leading to the highline railroad. The soil excavation in this area has been completed. The excavated soils have been placed in approved Subpart DD containment structures while awaiting eventual disposal in the CAMU Phase 2 cell.

#### **Corrective Action Management Unit (CAMU)**

In an August 9, 2007 letter, EPA provided Asarco with formal approval of the financial instrument and the amount of financial assurance to be provided by Asarco for the construction of the CAMU Phase 2 Cell. This letter indicated that, on August 1, 2007, a letter was sent to Asarco with EPA's final comments and approval of the CAMU work plan. In a letter dated September 5, 2007, EPA provided Asarco with clarification on CAMU technical comments and the approval process.

On September 18, 2007, Asarco participated in a conference call with EPA and the Montana Department of Environmental Quality to discuss the preliminary comments on Asarco's August 21, 2007 submission. On October 3, 2007, Asarco amending the CAMU Phase 2 Cell Design Analysis Report by 1) updating the waste approval table, 2) reassembling the post-closure and monitoring requirements appendix, and 3) refined the parameter list for waste material destined for CAMU Phase 2 cell disposal.

On September 4, 2007, Asarco received EPA's August 30, 2007 letter that grants Asarco an extension until spring 2008 for the storage of existing hazardous wastes and the additional hazardous wastes and solid wastes to be generated during the demolition and corrective action activities during 2007 and early 2008. On September 11, 2007, Asarco submitted a letter to EPA requesting that the extension continue until July 30, 2008.

#### **RI/FS Long-Term Monitoring Program**

From September 5-10, 2007, Hydrometrics provided oversight on drilling and installation groundwater monitoring wells SDMW-1 and SDMW-5. The former speiss-dross slurry wall groundwater monitoring wells (SDMW-1 through SDMW-5) were developed on September 27, 2007 and slug tests were conducted on September 28, 2007.

During September 2007, Asarco completed the bi-monthly sampling of groundwater monitoring wells and the monthly sampling of select residential well, as prescribed in Asarco's on-going Post Remedial Investigation (RI)/Feasibility Study (FS), Long Term Monitoring Program (April 2007). From September 4-13, 2007, Hydrometrics conducted the bi-monthly groundwater monitoring. A total of sixty-four samples were submitted to Energy Laboratories

for analysis of common ions and dissolved metals. The total number of samples included eighteen QA/QC samples (six-duplicates, six-rinsate blanks, and six-DI blanks). In addition, EPA split samples were collected for dissolved metals at twelve groundwater monitoring wells (EH-53, EH-61, EH-65, EH-101, EH-101 DUP, EH-111, EH-111 DUP, EH-112, EH-113, EH-114, EH-116, and EH-117). Two groundwater-monitoring wells (EH-54 and DH-2) contained insufficient water to collect samples. On September 27, 2007, groundwater well samples were obtained from the Nordstrom, Jensen, Jones, and Foley groundwater wells. The analytical results from this September 2007 sampling effort have not been received from Energy Laboratories. Copies of the August 2007 residential well notification cover letters have been attached to this monthly progress report.

A summary of the correspondence transmitted as part of the East Helena Consent Decree in September 2007 is included in Attachment 1.

**b. Identify any requirements under the Part VII of the Decree that were not completed in a timely manner, and problems or anticipated problem areas affecting compliance with the Decree;**

In accordance with the 2007 Addendum to Interim Measures Work Plan, East Helena Facility, Former Speiss-Dross Slurry Wall Monitoring, Operation, and Maintenance Work Plan, Asarco scheduled water level measurements and water quality sampling of the five recently constructed groundwater monitoring wells for September 12, 2007. To avoid cleaning and demolition conflicts, Asarco has re-scheduled these two tasks for the first week of October 2007. There were no other requirements that were not completed in a timely manner nor were there problems or anticipated problem areas that affect compliance with the Decree.

**c. Describe projects completed during the prior month, as well as activities scheduled for the next month;**

In accordance with the 1) 2006 Interim Measures Work Plan Addendum, Final Cleaning, Soil Sampling, Backfilling, and Interim Cap Work Plan and 2) 2006 Interim Measures Work Plan Addendum, Former Acid Plant Sediment Drying Area Slurry Wall, Monitoring, Operation, and Maintenance Work Plan, four areas in which interim caps have been installed are being inspected on a monthly basis with the most recent inspections occurring on September 7, 2007. These monthly inspections documented the condition of the interim caps. The interim cap covering the former speiss-dross plant area has been partially removed to accommodate the cleaning and demolition of the dross plant baghouse and 200-foot stack.

CAMU Landfill - In accordance with the July 2000 CAMU Design Analysis Report (Operation and Maintenance Plan), the CAMU is being inspected monthly with the last inspection occurring on September 17, 2007. This monthly inspection documented the condition of the CAMU.

During October 2007, Asarco is scheduled to continue the monthly and semi-annual sampling prescribed in the Post Remedial Investigation (RI)/Feasibility Study (FS), Long Term Monitoring Program (April 2007). Under this program, 1) the monthly sampling of the Nordstrom and Jones' irrigation groundwater wells and the Foley and Jensen residential groundwater drinking water wells are scheduled to take place and 2) the bi-annual sampling of groundwater monitoring wells and surface water site is scheduled to commence.

On September 27, 2007, EPA requested the collection of split samples from 1) twenty-nine groundwater-monitoring wells, 2) two residential supply wells, 3) one trailer park community well, and 4) one surface water sample site during the October/November 2007 semi-annual sampling event. In a September 28, 2007 e-mail, Asarco indicated its willingness to collect the split samples during the fall 2007 semi-annual sampling event. The trailer park sample will not be sampled since it is only collected as part of the comprehensive May sampling.

During the first week of October 2007, water level measurements and water quality sampling prescribed in the 2007 Interim Measures Addendum, Former Speiss-Dross Area Slurry Wall Monitoring, Operations and Maintenance Work Plan are scheduled to take place. Asarco contractor is scheduled to begin construction of the speiss-dross slurry wall in October 2007. Asarco is scheduled to conduct the soil sampling in the thaw house area as prescribed in the yet-to-be approved 2007 Interim Measures Addendum Work Plan - Speiss-Dross and Thaw House Areas, Soil Sampling, Excavation, Confirmatory Sampling and Interim Capping Work Plan. The placement of the interim cap is scheduled to commence in areas where above ground cleaning and demolition activities have been completed.

The RCRA Consent Decree annual public meeting is set for October 30, 2007. This meeting is scheduled to take place at 7:00 pm at the East Helena Volunteer Firehall. Public notices announcing the public meeting will be placed in the October 21, 2007 and October 28, 2007 Sunday editions of the Independent Record. During the week of October 22, 2007, Asarco will notify (by letter) interested parties and governmental officials of the meeting date. The Montana Department of Environmental Quality is scheduled to participate in the public meeting.

**d. Describe and estimate the percentage of studies completed;**

The Pump and Treat Pilot Scale Testing for Source Area Reduction of Groundwater Contamination is approximately 100% complete.

The jar testing (Phase I) of the East Helena PRB Materials Testing Program is 100% complete.

The slurry wall construction in the former acid plant sediment drying area is 100% complete.

The interim capping project for the former acid plant sediment drying area, dross area, sinter plant area, and gas cleaning section of the acid plant is 100% complete

The revised May 2007 CAMU Phase 2 Cell design analyses and revised version of the CAMU Phase 2 Cell cost schedule are 100% complete.

**e. Describe and summarize all findings to date;**

The details of past findings through August 2007 are described and summarized in previous monthly progress reports.

**f. Describe actions being taken to address problems;**

There were no actions required to address problems associated with the Decree.

**g. Identify changes in key personnel during the period;**

Asarco continues to use the services of Asarco technical personnel and Hydrometrics Incorporated to perform the various activities required under the Consent Decree.

**h. Include copies of the results of sampling and tests conducted and other data generated pursuant to work performed under Part VII of the Decree since the last Progress Report. Asarco may submit data that has been validated and confirmed by Asarco to supplement any prior submitted data. Updated validated and confirmed data shall be included with the RFI Report, if not delivered before;**

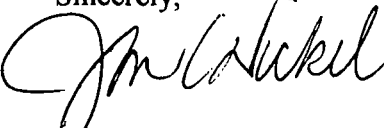
One validation package, titled "*Validation Summary, Asarco East Helena Post RI/FS Long-Term Monitoring Program, East Helena Residential Groundwater, Inorganic Analyses, August 2007*" is attached to this monthly progress report.

**i. Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.**

ASARCO filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Bankruptcy Code in the Southern District of Texas on August 9, 2005. ASARCO hopes to use its chapter 11 bankruptcy proceeding to improve its financial position to the point where it can successfully reorganize and immerge from bankruptcy. ASARCO further hopes that at that time it will be in a position to make the required financial assurance demonstration. See section a. of this

monthly progress report for a discussion of the financial assurance for the CAMU project at the East Helena site.

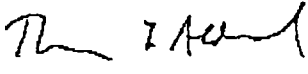
Sincerely,

A handwritten signature in black ink, appearing to read "Jon Nickel". The signature is fluid and cursive, with the first name "Jon" and last name "Nickel" clearly distinguishable.

Jon Nickel

CERTIFICATION  
PURSUANT TO U.S. v ASARCO INCORPORATED  
(CV-98-3-H-CCL, USDC, D. Montana)

I certify under penalty of law that this document, September 2007 Progress Report and all attachments, were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Signature   
Name: Thomas L. Aldrich  
Title: Vice President Environmental Affairs  
Date: October 8, 2007



CONSENT DECREE  
EAST HELENA SITE  
SEPTEMBER 2007 PROGRESS REPORT

SUMMARY OF CORRESPONDENCE  
ATTACHMENT 1

DATE OF TRANSMITTAL	CORRESPONDENCE SENT FROM	CORRESPONDENCE SENT TO	SUBJECT	RESPONSE
Attached to This Monthly Progress Report	Jon Nickel	Linda Jacobson	INL PRB Testing Update (September 2007)	No Formal Response Required
Attached to This Monthly Progress Report	Jon Nickel	Linda Jacobson	CDM Status Update on Bench - Scale PRB Testing Work Plan (East Helena PRB Materials Testing - Jar Test Results)	No Formal Response Required
September 17, 2007	Jon Nickel	Linda Jacobson	Geo-Con Statement of Qualification	No Formal Response Required
September 12, 2007	Jon Nickel	Linda Jacobson	2007 Interim Measures Work Plan Addendum - Speiss-Dross and Thaw House Cleaning, Demolition, and Soils Sampling Work Plan	Informal Comments Provided in a September 17, 2007 Conference Call
September 25, 2007	Jon Nickel	Linda Jacobson	2007 Interim Measures Work Plan Addendum - Speiss-Dross and Thaw House Soil Sampling, Excavation, Confirmatory Sampling and Interim Capping Work Plan	Awaiting EPA Formal Response

October 3, 2007	Jon Nickel	Linda Jacobson	Responses to EPA's September 18, 2007 Informal Comments, Design Report for CAMU Phase 2 Cell	Awaiting EPA Formal Approval
September 11, 2007	Jon Nickel	Linda Jacobson	Letter Requesting CAMU Eligible Waste Storage Extension	Awaiting EPA Formal Response
Attached to This Monthly Progress Report	Jon Nickel	Linda Jacobson	Residential Well Notification Letters	No Formal Response Required
Attached to This Monthly Progress Report	Jon Nickel	Linda Jacobson	Validation Summary, Asarco East Helena Post RI/FS Monitoring Program, East Helena Residential Groundwater, Inorganic Analyses, August 2007	No Formal Response Required